UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

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IN THE MATTER OF THE PETITION

of

12 CIV 5838 (BSJ)

DANIEL FLORIO, as Owner of the Motor Yacht "CAROLE JAYE", for Exoneration from or Limitation of Liability.

## NOTICE OF MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

Pursuant to Federal Rule of Civil Procedure 12(b)(1), Claimant Frank Bauco hereby moves this Honorable Court to dismiss Petitioner Daniel Florio's Petition for Exoneration from or Limitation of Liability. As discussed more fully in the accompanying Memorandum of Law in Support of Motion to Dismiss for Lack of Subject Matter Jurisdiction, the Limitation Petition is deficient and does not warrant the exercise of admiralty subject matter jurisdiction over this action. As such, Claimant Frank Bauco respectfully requests that the Court dismiss the Limitation Petition and dissolve the restraining order that has been entered.

Dated: September 26, 2012 New York, NY

Claimant Frank Bauco,

By: /s/

Thomas L. Tisdale (TT5263) Tisdale Law Offices, LLC 60 East 42nd Street, Suite 1638 New York, NY 10165

Tel: 212-354-0025 Fax: 212-869-0067 ttisdale@tisdale-law.com

## **CERTIFICATION OF SERVICE**

I hereby certify that on September 26, 2012 a copy of the foregoing NOTICE OF MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the Court's CM/ECF system.

